

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**UNITED STATES OF AMERICA *ex rel.*
JEFFREY H. LIEBMAN and DAVID M.
STERN, M.D.**

Plaintiff,

v.

**METHODIST LE BONHEUR
HEALTHCARE, METHODIST
HEALTHCARE-MEMPHIS HOSPITALS,**

Defendants.

Case No. 3:17-CV-00902

**District Judge William L.
Campbell, Jr.**

**Magistrate Judge Barbara D.
Holmes**

**DEFENDANTS' MOTION TO EXCLUDE
GOVERNMENT'S SUPPLEMENTAL INITIAL DISCLOSURES**

Pursuant to Federal Rule of Civil Procedure 37, Defendants Methodist Le Bonheur Healthcare and Methodist Healthcare-Memphis Hospitals (collectively, “Methodist” or “Defendants”) move to exclude from any motion, at a hearing, or at trial certain witnesses and information disclosed in the government’s untimely Fourth, Fifth, Sixth, and Seventh Supplemental Initial Disclosures. The deadline for the parties to exchange initial disclosures was June 24, 2022, more than a year ago. Fact discovery closed almost a year ago, on September 23, 2022. Based on the record developed during fact and expert discovery, Methodist filed a Motion for Summary Judgment on April 14, 2023.

After Methodist identified failures of proof in the government’s case in its Motion for Summary Judgment, the government served its Fourth, Fifth, Sixth, and Seventh Supplemental Initial Disclosures between May 31, 2023, and August 9, 2023, disclosing new witnesses and information intended to address those failures. In those untimely disclosures, the government disclosed some witnesses for the first time, and it grossly expanded the scope of disclosures for

other witnesses to include knowledge and information that the government never disclosed during fact discovery.

When a party fails to satisfy its disclosure obligations under Rule 26, Rule 37 and binding Sixth Circuit precedent mandate that exclusion of the undisclosed witness or evidence is “automatic and mandatory” unless the failure was substantially justified or harmless. *Roberts v. Galen of Va., Inc.*, 325 F.3d 776, 782 (6th Cir. 2003). This case has been pending for more than six years. The government can provide no substantial justification for its failure to disclose, and that failure is extraordinarily prejudicial to Methodist. For the reasons set forth in the accompanying Memorandum of Law, the Court should exclude the undisclosed witnesses and information from any motion, at a hearing, or at trial.

Pursuant to Local Rule 7.01(a)(1), Methodist conferred with counsel for the United States, and the government opposes the relief that Methodist seeks in its Motion to Exclude.

Dated: August 28, 2023.

Respectfully submitted,

/s/ Brian D. Roark

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served on the following counsel via the Court's CM/ECF email notification system on this the 28th day of August, 2023:

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